scheduling of an execution sale of the Property upon the Judgment prior to August 1, 2002.

On January 21, 2003, Canadian River commenced an action in the District Court based ***solely*** upon the **Option/First Right Agreement**, and requested that (i) any transfer of the Property pursuant to the Option/First Right Agreement be enjoined, (ii) the Option/First Right Agreement be declared void, and (iii) a monetary sum be awarded to Amigo to place it in *status quo ante*. Canadian River's petition was silent with respect to the validity of the Judgment. Amigo removed the case to the Federal Court on February 13, 2003, thereby initiating the Federal Court Action.

The Federal Court's Order – the sole basis for Canadian River's contention that the Judgment is moot – addressed only the Option/First Right Agreement, and declared that Allan Jensen's execution of the Option/First Right Agreement on behalf of Canadian River exceeded his corporate authority. **The Order did not address in any manner the validity of the Judgment.**

In fact, the Federal Court did not have jurisdiction to address the validity of the Judgment – a state court judgment – in the Federal Court Action. Pursuant to the *Rooker-Feldman* doctrine, "a party losing in state court is barred from seeking what in substance would be appellate review of a state judgment in a United States [trial] court." *See, e.g., Abboud v. Abboud*, 237 B.R. 777, 780 (B.A.P. 10th Cir. 1999); *Weaver v. Boyles*, 172 F. Supp.2d 1333, 1338 (D. Kan. 2001). Jurisdiction to review valid state court judgments lies exclusively with the state courts and, ultimately, with the United States Supreme Court. *Abboud*, 237 B.R. at 780.

The Federal Court's Order did not – and could not – address the validity of the Judgment. Canadian River's proposition that the Judgment is moot based on the Federal Court's Order, therefore, must be rejected.

B. Canadian River Did Not Preserve for Appellate Review its Contention that the Judgment is Moot.

Even if the Federal Court's Order provided a basis for Canadian River's contention that the Judgment is moot (which it does not), the Order was not included as part of the record on appeal to the Oklahoma Supreme Court. Canadian River, therefore, did not preserve the issue for appellate review.

Generally, review of an issue on appeal is confined to the record presented to the appellate court. *Wofford v. Mental Health Serv., Inc.*, 946 P.2d 1149, 1152 n.4 (Okla. 1997); *Krokowski v. Henderson Nat'l Corp.*, 917 P.2d 8, 10 (Okla. 1996); *Saxon v. Macy*, 795 P.2d 101, 102 (Okla. 1990); *Lawrence v. Cleveland County Home Loan Auth.*, 626 P.2d 314, 315 (Okla. 1981). Canadian River failed to include the Federal Court's Order in the record on appeal to the Oklahoma Supreme Court. In this regard, the Oklahoma Court of Civil Appeals stated in its Opinion:

> Appellant's final proposition of error seeks to vacate the underlying foreclosure judgment in favor of Amigo Feeders on the assertion that an intervening federal court judgment renders the foreclosure judgment moot. There is no record of the federal court judgment in the appellate record. Yet, Appellant requests this Court to take judicial notice of the federal court proceeding. We

> decline to do so. While this Court may take judicial notice of its own records in litigation interconnected with a case before it, we cannot take judicial notice of records in other courts.
>
> Notwithstanding the omission of the federal court judgment roll from this appellate record, Appellant urges the foreclosure judgment should be vacated because all parties admit to the existence and effect of the federal judgment in their briefs. . . . However, there is no consensus here as to the factual basis, effect and import of the federal judgment. . . . [W]e decline to find the deficient record was cured by the parties' "admissions" in their briefs. Accordingly, Appellant's third allegation of error is rejected.

Petition, Appendix, Opinion at ¶¶ 12-13.

Based on the foregoing, Canadian River failed to preserve for appellate review any consideration of its contention that the Judgment is moot, and Canadian River's contention may not now be properly considered by this Court.

C. Canadian River Ratified the Judgment.

Even if this Court could properly consider Canadian River's contention that the Judgment is moot, Canadian River ratified the Judgment by its actions (or inactions) in the Foreclosure Proceeding and in the Federal Court Action.

Although the Federal Court's Order was not entered until February 18, 2004, Canadian River initiated what would become the Federal Court Action in January 2003. Thus, as early as January 2003, Canadian River was

clearly aware of the facts which Canadian River now claims are the grounds for declaring the Judgment moot. Yet, Canadian River never once challenged or objected to the validity of the Judgment in the Federal Court Action. Additionally, in November 2003 and after the commencement of the Federal Court Action, counsel for Canadian River approved – without objection – two journal entries of judgment in the Foreclosure Proceeding, both of which specifically recited that the Judgment had been entered. Canadian River now claims that the Judgment is moot.

It is well settled under Oklahoma law that a principal must, within a reasonable time, repudiate the unauthorized act of his agent if he does not intend to be bound thereby. *Price v. Peeples*, 168 P. 191, 193 (Okla. 1917). Long acquiescence without objection, and even silence of the principal, will in many cases amount to a conclusive presumption of the ratification of an unauthorized act. *Id.*

In this case, Canadian River ratified the Judgment by not raising the issue as to its validity during the Federal Court Action, and by approving without objection two journal entries of judgment in the Foreclosure Proceeding which expressly stated that the Judgment had been entered. *See id.* at 194 (where the defendant made her codefendant an agent and the defendant knew that her codefendant had authorized the entry of judgment without the defendant's consent, but made no protest and was silent for over seven months until judgment was about to be enforced by sale of realty, such silence was evidence that the defendant fully ratified the acts of her codefendant and the judgment).

D. Collateral Estoppel is Not Applicable.

Canadian River seems to suggest that the Oklahoma Supreme Court, and now this Court, is bound by the Federal Court's Order under the doctrine of collateral estoppel.

The doctrine of collateral estoppel provides that a final judgment is conclusive in a subsequent action between the parties on a different claim as to issues raised in the subsequent action which were **actually litigated and determined in the prior action**. *Trimble v. Kindrick*, 852 P.2d 758, 760 (Okla. Civ. App. 1992) (emphasis added). An issue is actually litigated if it is properly raised in the pleadings or otherwise submitted for resolution, and in fact decided. *Isokariari v. Hillcrest Med. Ctr.*, 33 P.3d 691, 693 (Okla. Civ. App. 2001). An issue is necessarily determined if the judgment would not have been rendered but for the ruling on that issue. *Id.*

The party relying on a claim of issue preclusion bears the burden of establishing that the prior litigation actually determined the question of fact sought to be precluded. *Carris v. John R. Thomas and Assoc., P.C.*, 896 P.2d 522, 528 (Okla. 1995). The test is whether the question or fact in issue in the second action is a question or fact which was actually determined in the first adjudication. *Id.*

The doctrine of collateral estoppel is inapplicable in the present case for at least one very simple reason – the Federal Court's Order did not address the validity of the Judgment. The issue regarding the validity of the Judgment, therefore, was not (and could not be) "actually litigated" in the Federal Court Action. Thus, Canadian River's claim that this Court is bound by the Federal Court's Order vis-à-vis the validity of the Judgment

pursuant to the collateral estoppel doctrine is completely without merit.

E. The "Law of the Case" Doctrine is Not Applicable.

Canadian River also seems to suggest that, under the "law of the case" doctrine, this Court should find that the Judgment is moot. Again, the "law of the case" doctrine is inapplicable in this proceeding.

The "law of the case" doctrine bars relitigation of issues that have been settled by a previous appellate opinion **in the same case**. *Shoemaker v. Estate of Freeman*, 967 P.2d 871, 875 (Okla. 1998) (emphasis added); *see also Panama Processes, S.A. v. Cities Serv. Co.*, 796 P.2d 276, 283 n.27 (Okla. 1990) (The "settled-law-of-the-case" doctrine operates to bar relitigation of issues that have been settled by an earlier appellate opinion **in that case**.) (emphasis added); *Wilson v. Harlow*, 860 P.2d 793, 797 (Okla. 1993). In addition, the "law of the case" doctrine is not controlling where the facts and issues are different in subsequent proceedings. *Eaton Enter. v. City of Oklahoma City*, 65 P.3d 277, 280 (Okla. 2003).

In this case, the "law of the case" doctrine is inapplicable for two reasons. First, the Federal Court's Order did not address the validity of the Judgment and, therefore, any issue regarding the validity of the Judgment has not previously been litigated. Second, the Federal Court Action was a separate proceeding from this case, and the facts and issues involved in the two cases are different. Thus, by definition, the "law of the case" doctrine has no application in this case. Canadian River's arguments and authorities to the contrary are simply inapposite.

F. The District Court Previously Rejected Canadian River's Contention that the Judgment is Moot.

Finally, Canadian River requests that "[a]t a minimum, this case should be remanded to the trial court for consideration of the federal judgment and its effect on the foreclosure." In fact, on July 2, 2004, Canadian River filed in the Foreclosure Proceeding a Motion to Vacate Judgment and Brief in Support Thereof, requesting that the District Court vacate the Judgment on the same grounds urged herein, i.e., that the Judgment is moot pursuant to the Federal Court's Order. On July 21, 2004, the District Court denied Canadian River's motion.

Based on the foregoing, the District Court previously considered the effect of the Federal Court Order on the validity of Judgment and rejected Canadian River's arguments. Remand to the District Court is, therefore, unnecessary.

III. The Foreclosure Proceeding Satisfied Due Process Principles.

In Propositions II and III of its Petition, Canadian River asserts generally that the Foreclosure Proceeding and, in particular, the court-ordered Appraisal, did not satisfy federal due process standards. Canadian River's assertion is not supported by the record or applicable law.

A. The Appraisal was Proper.

Canadian River first alleges that the court-ordered Appraisal did not meet the statutory requirements of 12 OKLA. STAT. § 759 because the Appraisal did not include

either the addresses or the qualifications for the three appraisers. Pursuant to 12 OKLA. STAT. § 759:

> If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property levied on, upon actual view; and the disinterested persons shall return to the officer their signed estimate of the real value of the property.

12 OKLA. STAT. § 759(B).

Contrary to Canadian River's allegations, 12 OKLA. STAT. § 759(B) does not require that the Appraisal contain the three appraisers' addresses or qualifications. However, the face of the Appraisal did indicate that the three appraisers were "[d]isinterested householders, residing in Canadian County, State of Oklahoma." In addition, during the hearing on the Motion to Confirm Sale, the District Court specifically addressed the appraisers' qualifications and found them to be qualified and competent appraisers who had performed hundreds of court-ordered appraisals in Canadian County, Oklahoma:

> The three disinterested persons who were selected by the sheriff, F. Dale Bynum, Sandra Bynum, and Kelly Davis. I'm sure all of you probably know F. Dale Bynum. Mr. Bynum is a senior appraiser and teaches the course to the people who teach the course to the real estate development people and appraisers. He's been used by this Court and appointed by this Court in excess of probably 500 appraisals or condemnation actions and has testified before this Court for the full 23 years, almost, that I've been on the

> bench. I'm well-familiar with the quality of his work.
>
> I bring that because the record would be silent as to that other than the fact of the Court's knowledge. I also know the other two individuals. They are three people who have been appointed by the sheriff for quite a number of years on doing sheriff's appraisals. Mr. Bynum is licensed, and he has the highest licensing requirement. He does appraisals for the Federal Government all over, as well as state and private appraisals. He's a very eminently qualified appraiser. I think probably one of the best in the state of Oklahoma.

Canadian River's contention that the Appraisal failed to meet the requirements of 12 OKLA. STAT. § 759(B) is without any legal basis.

Canadian River next complains that the Appraisal was defective because it did not include the value of the Property's mineral interests or certain speculative geological/economic valuations of a proposed concrete sand business in connection with the Property. Canadian River does not cite any authority for the proposition that an appraisal of property for purposes of a sheriff's sale must include any future, speculative uses of the property. Moreover, Canadian River raised the very same argument during the hearing on the Motion to Confirm Sale. In response, the District Court first noted:

> What's your response to the speculative nature? Some of the letters you've got in support of your valuation of the sand, etc., are principally businesses that conduct business in this area and the letters basically – some of them are even unsigned – just simply state something that my

> company uses 42 million pounds of sand valued at six-thirteen a pound, or we have a contract with all the Wal-Mart stores in Oklahoma and Kansas and somewhere else, and we use that. There's no actual contracts signed or stating that we are in contract with Canadian River Land and Cattle for the sand at this amount. It, to me, appears to be a speculation also as pointed out by . . . Mr. Kuehling, that there was a million dollar necessity to build up this business, and I thought it was with a return of not less than four years. That, to me, appears to be in the nature of some speculation as to what this property could be worth if it was utilized for these purposes. The problem we've got here is that it had not been utilized for those purposes and that business hasn't been put into effect and that it's all mere speculation.

After considering the arguments of counsel, the District Court concluded:

> So the issue, really, comes down to the law that was cited in this issue about is the sale price based on that evaluation or appraisal, is that going to be shocking to the conscience of the Court. . . . When you consider the other issues that have been presented and the bankruptcy evaluations that were used – and I understand that that's not an appraisal, but it is a statement used for purposes of the Bankruptcy Court as a valuation of the property by Canadian River Land and Cattle, Incorporated. The fact that that was done with or without counsel, I don't see anything that's ill-advised about it. That was a position taken by them in the Bankruptcy Court. The Bankruptcy Court relied on that position. The sale value when considered to those

amounts, still meets the requirements of the two-thirds figure.

> The Court at this time would find that the sale price does not shock the conscience of the Court when I look at the totality of the stated valuations of the properties. The future, I think, is too speculative in nature for this Court to accept. So based on that, at this time, the Court is going to overrule the objection to the confirmation of sheriff's sale, specifically finding that the sale price does not shock the conscience of the Court, that there is a record that supports the appraisal value given by the three disinterested appraisers, commissioners, and that the property was properly noticed, it was sold at public sale, and that there is nothing in that process that I think was inappropriate. I think it was done correctly.

Canadian River contends that the District Court "completely ignored" Canadian River's speculative valuations and did not "make any attempt to discuss the reasons for its disregard" of those valuations. *See* Petition at 20. To the contrary, the District Court fully considered the arguments of counsel regarding this issue and made express findings on the record as to why it would not consider the speculative valuations urged by Canadian River.

Agreeing with the District Court, the Oklahoma Court of Civil Appeals stated in its Opinion:

> After reviewing the record and applicable law, we reject Appellant's contention that the trial court erred when it failed to adopt Appellant's real property appraisals and valuation method. "The only test a court can have of the

> value of property sold at a forced sale is the price it would bring on due notice at a public sale fairly conducted." *City of Wewoka ex rel. North v. Fink*, 1946 OK 296, ¶13, 173 P.2d 936, 939, quoting *State ex rel. Comm'rs of Land Office v. Harrower*, 1934 OK 50, 29 P.2d 124. Therefore, it was not error for the trial court to reject appraisals which value the real property at some remote or future time after the property has been developed or utilized for more profitable uses.

Petition, Appendix, Opinion at ¶ 9.

B. The Sale Price of the Property was Adequate.

For its final proposition of error, Canadian River alleges that the sale of the Property must be set aside because the sale price was below the amount required by Oklahoma law.

A sheriff's sale may be set aside when (1) the sale price is so grossly inadequate that it shocks the conscience of the court, (2) the sale price is grossly inadequate and the sale is tainted by additional circumstances, or (3) the result is inequitable to one or more of the parties before the court. *First Fed. Sav. and Loan Ass'n, Chickasha, Oklahoma v. Nath*, 839 P.2d 1336, 1343 n.37 (Okla. 1992). It is the court's duty, whether confirming or setting aside a sheriff's sale, to protect all parties concerned. *Id.* The sale must appear to be fair and proper in all essential respects. *Id.*

Mere inadequacy of price, not accompanied by other circumstances of fraud or irregularity, is not a ground for refusal to confirm a foreclosure sale unless such price is so

grossly inadequate as to shock the conscience of the court. *City of Wewoka ex rel. North v. Fink*, 173 P.2d 936, 939 (Okla. 1946). In this case, Canadian River did not raise during the Foreclosure Proceeding any circumstances of fraud or irregularities concerning the sale of the Property. Canadian River contends only that the sale price of the Property was so grossly inadequate that the District Court's conscience should have been shocked and the sale set aside.

Under Oklahoma law, when property is appraised, as provided by 12 OKLA. STAT. § 759, and is sold at a price not less than two-thirds of the appraised value, as provided by 12 OKLA. STAT. § 762, the sale is valid, and the court is precluded by force of statute from inquiring into the adequacy of the sale price so long as the appraisement is permitted to stand. *Rodolf v. First Nat'l Bank & Trust Co. of Tulsa*, 78 P.2d 296, 298 (Okla. 1938). In this case, as reflected by the Appraisal, the value of the Property was appraised at $2,132,500.00. The Property was sold to Amigo, being the highest bidder, for $1,740,000.00, said amount being more than two-thirds of the appraised value of the Property (82%) as required by 12 OKLA. STAT. § 762. In addition, the sale price of the Property represented approximately 69% of the value of the Property as reflected on Canadian River's own bankruptcy schedules ($2,500,000.00), and approximately 82% of the value of the Property (including the minerals) as reflected by the Nichols Appraisal – Canadian River's own independent appraisal. Under these circumstances, the sale price of the Property was not so grossly inadequate so as to shock the conscience of the District Court. *See* Petition, Appendix, Opinion at ¶ 11.

The sale of property under foreclosure is a judicial sale, and the order of confirmation is a final and binding judgment of the court. *Berke v. Home Owners' Loan Corp.*,

134 P.2d 346, 347 (Okla. 1943). A trial court's judgment upon a motion to confirm a judicial sale will not be disturbed on appeal unless it affirmatively appears the trial court abused its discretion. *See United Oklahoma Bank v. Moss*, 793 P.2d 1359, 1364 (Okla. 1990); *Schave v. New York Life Ins. Co.*, 94 P.2d 892, 893 (Okla. 1939); *Drummond v. James*, 300 P. 658, 659 (Okla. 1931).

Based on the foregoing arguments and authorities, it is clear that the District Court did not abuse its discretion when it sustained Amigo's Motion to Confirm Sale and entered its Order Confirming Sale on October 30, 2003. As such, the Oklahoma Supreme Court's denial of Canadian River's Amended Petition for Certiorari was proper.

CONCLUSION

Respondent, West Plains Grain, Inc., d/b/a Amigo Feeders, respectfully requests that this Court deny the Petition for Writ of Certiorari filed by Petitioner, Canadian River Land & Cattle, Inc.

Respectfully submitted,

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05-1133 No.

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SUPREME COURT, U.S.

In the Supreme Court of the United States

CANADIAN RIVER LAND & CATTLE, INC., et al.,

Petitioner,

v.

WEST PLAINS GRAIN, INC., d/b/a AMIGO FEEDERS,

Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

ON PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The purpose of this Reply is to address the issues raised by Respondent West Plains Grains, Inc., d/b/a Amigo Feeders ("Respondent") in its Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner Canadian River Land & Cattle ("Petitioner" or "Canadian River"). Specifically, Petitioner seeks to focus this Honorable Court's attention on specific issues which demonstrate that error of such a substantial nature occurred in the Oklahoma state court proceedings that this Court must exercise its jurisdiction to ensure that justice is properly carried out in this case. Additionally, several of the legal arguments asserted by Respondent in its defense are not applicable to any issue in this case.

This Court's rules are very clear that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." One of the reasons specified by the Court, in subsection (a), allows this Court to exercise its jurisdiction in this case because the actions of the Oklahoma appellate courts have "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup.Ct.R.10, 28 U.S.C.A.

When this Court weighs the facts and circumstances presented in this case with the fundamental interests of justice and due process, it will become apparent that intervention by this Honorable Court is necessary for several reasons, including the complete denial of due process during the foreclosure

proceedings conducted by the trial court and in the manner in which the appellate review was conducted by both the Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court.

Based on the argument and authority presented, this Court is respectfully requested to grant Petitioner's request for a Writ of Certiorari and find that Oklahoma has failed to ensure due process through its judicial processes in foreclosure situations.

PROPOSITION I

THE STATE COURT ERRED WHEN IT FAILED TO CONSIDER THE PRECLUSIVE EFFECT OF THE FEDERAL JUDGMENT.

One of the primary issues raised in this Petition involves the effect of a federal court decision in the Western District Court of Oklahoma, which was entered subsequent to the entry of judgment in the District Court of Canadian County, Case No. CJ-2001-408. The essential finding in the federal litigation was that many of the documents instrumental in the transactions which occurred between these parties were improperly executed by an owner of Canadian River. The Court found that mortgage documents executed by Alan Jenson were ultra vires and were, thus, not enforceable.

Based on the federal court judgment, Petitioner attempted to obtain relief in the state court, both at the district and appellate level. Notwithstanding the request for relief in the

trial court based on subsequent federal court findings, the Oklahoma Court of Civil Appeals failed and refused to acknowledge the existence of the federal Order because it had not been made a part of the record by the trial court. This refusal was a clear violation of due process, denying Petitioner the right and opportunity to an appeal of right of a decision in a trial court against him.

Respondent asserts that this Court is barred from consideration of the issues raised with respect to the federal judgment for a variety of reasons. None of those reasons are sufficient to require this Court to refuse jurisdiction in the case.

A. The *Rooker-Fedman* Doctrine is Not Applicable in This Case.

The ***Rooker-Feldman*** doctrine is an aid in the interpretation of the Supreme Court's jurisdiction as defined by statute in 28 USCA § 1257. The doctrine holds that as a general rule, federal courts are barred from providing direct review in the lower federal courts of a decision reached by the highest state court, since such authority is vested solely in the United States Supreme Court. ***ASARCO, Inc. v Kadish***, 490 US 605, 104 L Ed 2d 696, 109 S Ct 2037 (1989).

Under the ***Rooker-Feldman*** doctrine, a lower federal court has no jurisdiction to review the final judgment of a decision entered by the highest court in a particular state court, since review of such a determination is an exercise of appellate jurisdiction, available only in the United States Supreme Court.

It is clear from the above cited authority that the focus of the ***Rooker-Feldman*** doctrine is on the authority of a United States District Court to entertain a challenge to a final state court decision. This is true even when the challenge allege that the state court's action was unconstitutional; review of those decisions may be had only in the United States Supreme Court. ***District of Columbia Court of Appeals v Feldman***, 460 US 462, 75 L Ed 2d 206, 103 S Ct 1303 (1983).

Based on the above analysis, it is clear that the ***Rooker-Feldman*** doctrine applies only when a federal district court attempts to act in a manner which would constitute an improper effort by a litigant to appeal a state court judgment. Filing a new action attacking the state court judgment in the federal district court is improper based on the rules established by ***Rooker-Feldman***. That situation did not occur in the present case.

In fact, the situation addressed by the Supreme Court in ***ASARCO, Inc.*** 490 US at 619, is conclusive in the present case. The Court held:

> We also conclude that "the record shows the existence of a genuine case or controversy essential to the exercise of the jurisdiction of this Court." ***Tileston v. Ullman***, 318 U.S. 44, 46, 63 S.Ct. 493, 494, 87 L.Ed. 603 (1943). These parties remain adverse, and "valuable legal rights ··· will be directly affected to a specific and substantial degree by the decision of the question of law." (Citation omitted).

Concurrent with the foreclosure action filed in Canadian County, the federal court litigation testing the documents supporting the mortgage and other transactions associated with the proceedings between the parties to this litigation was commenced. It is not denied by any party that the federal litigation held that Jenson did not have the authority to execute documents on behalf of Petitioner, yet no appellate level court has considered the effect of that judgment on the foreclosure action entered in Canadian County.

B. Petitioner was Denied Due Process When the Lower Courts Refused to Consider the Effect of the Federal Judgment on the Canadian County Foreclosure Judgment.

As noted in the Respondent's Brief in Opposition, the Oklahoma Court of Civil Appeals refused to consider the effect of the federal order on the validity of the lower court decisions because the federal judgment was not included in the record. Federal courts have recognized that such a failure by a court clerk or court report may result in a denial of due process when such error causes prejudice to the defendant. See ***Mitchell v. Wyrick***, 698 F.2d 940, 941 (8th Cir.1983). If a litigant demonstrates some prejudice resulting from the failure to supply a complete record on appeal, then he is entitled to relief from the federal court. ***Id***. at 942; see also ***Saathoff v. Hesse***, No. 95-1130, 1995 WL 749722, at 2 (10th Cir. Dec. 19, 1995) (unpublished order and judgment); ***Ortiz Salas v. INS***, 992 F.2d 105, 106 (7th Cir.1993); ***White v. Florida Dep't of Corrections***, 939 F.2d 912, 914 (11th Cir.1991); ***Bransford v. Brown***, 806 F.2d 83, 86 (6th Cir.1986).

In ***Conover v. State***, 1999 OK CR 26, 900 P.2d 291, the Oklahoma Court of Criminal Appeals discussed a case factually similar to the present case. In that case, the appellant filed a designation of record which included all the exhibits used during the trial of his case. When he received his copy of the record on appeal, many of the exhibits were not included. The deficiencies in the record were to violate his right to due process and the case was remanded for a properly prepared record.

It is admitted by Respondent that the federal litigation found that some documents intricately connected with the entirety of the transactions were *ultra vires*. Respondent follows this admission with the request that the Court ignore the illegitimacy of the transactions and affirm the portion of the transaction at issue in the present case.

In its objection to the sheriff's sale, Petitioner sought to enforce the conclusions of the federal court in the case pending in Canadian County; however, the trial court failed to give due consideration to the conclusions of the federal court.

The error committed by the trial court was compounded when Petitioner was denied the opportunity to obtain any level of due process on appeal when the Oklahoma Court of Civil Appeals refused to consider the effect of the federal court order on the foreclosure action. This Court should intervene and grant Petitioner's request for Certiorari.

PROPOSITION II

THE FORECLOSURE ACTION DID NOT SATISFY EVEN MINIMUM PRINCIPLES OF DUE PROCESS.

Oklahoma law is very clear with respect to the requirements that must be met in order to ensure due process prior to a judicial sale when a property is foreclosed. In this case, those minimum requirements were not met.

A. The Appraisal Process was Completely Improper.

While it is true that there were three appraisers used in the valuation process of Petitioner's property, it is very clear that these were not independent appraisers. Not only does the record fail to indicate, as required by law, the addresses of the appraisers, the addresses if revealed would all be the same. Two of the appraisers are related and all three work at the same office. These are not independent appraisers.

When Petitioner attempted a challenge to the legitimacy of the appraisals, as clearly documented in the Respondent's Brief in Opposition, the trial court essentially refused to consider the issue, indicating that one of the three appraisers was "eminently qualified." The issue of qualification was not necessarily in question. Rather, the question for the court was whether the appraisers were independent and uninvolved. The discussion by the trial court begs the question by simply focusing on the qualifications of one of the three.

When a case involves a judgment liens, Oklahoma law requires strict adherence to the state statutory procedures and that would certainly include the prerequisite appointment of the appraisers. ***U.S. Mortg. v. Laubach***, 73 P.3d 887 (Okla. 2003).

The defects in the appraisal process are well documented in the pleadings and record before this Court. They were ignored by the Oklahoma Court of Civil Appeals, which was affirmed by the Oklahoma Supreme Court.

In this case, there is no question that certain assets on the property were not included in the appraisal of the property. The trial court noted at the hearing on the Objection to the Confirmation of the Sheriff's Sale that none of the appraisals took into consideration the highest and best use of the property as a sand mine.

The judge opined that because there were no contracts in place to sell the sand mined on the property, that use of the property for its highest and best use could legitimately be ignored.

In this case, Petitioner was denied a fair and accurate appraisal of his property. The highest and best use contemplates a present existing use or one reasonably likely to take place in the near future, whereby availability of this future use would have affected the market price. ***Wilson v. United States***, 350 F.2d 901 (10th Cir. 1965). See, also, ***United States v. 1,291.83 Acres of Land***, 411 F.2d 1081 (6th Cir. 1969); ***Cameron Development Co. v. United States***, 145 F.2d 209 (5th Cir. 1944).